Supreme Court, U.S.
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No. 02-1152

In The

Supreme Court of the United States

NORAH THURMAN,

Petitioner,

versus

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Court Of Appeal, First Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

A. Facts

The plaintiff, seeking a doctoral degree in communication disorders, enrolled in the Graduate School of Louisiana State University ("LSU") in the Fall 1991 semester. At all relevant times, her major professor was Paul Hoffman, the chair of the Department of Communication Sciences and Disorders. The other members of her graduate advisory committee were Jan Norris, Janna Oetting, and Hugh Buckingham, all of whom were professors in the same department. A fifth committee member, Professor Jim West, was appointed from outside the department as required by the Graduate School Handbook.

As is typical of doctoral students, Thurman spent the first several years of her program taking graduate level courses in a traditional classroom setting, then spent the remainder of her program researching and writing her dissertation. While preparing her dissertation, she typically met with Hoffman, her major professor, once a month. The plaintiff would submit drafts of her dissertation to Hoffman, who would then edit the submissions and propose areas for further research.

In the Spring 1997 semester, Thurman took her final examination, which consisted of an oral defense of her dissertation before her graduate advisory committee. The committee members unanimously agreed that the dissertation did not deserve a passing grade. They noted numerous substantive problems with the written dissertation itself; even more troubling, Thurman did not appear to have a clear and detailed understanding of her own project, as she was unable to satisfactorily explain or defend the literature, the methods, the statistics, or the

results of her research. The committee was thus concerned that Thurman had relied too heavily on her major professor and had not demonstrated the ability to do independent research and writing.

Despite their reservations, the committee members gave Thurman another chance to obtain her degree. To demonstrate that she was capable of working independently, Thurman was instructed to revise the document using only the oral and written feedback given to her at the final exam, without any additional consultation with Hoffman or the other committee members. She would then be allowed to resubmit the dissertation in the Fall 1997 semester. In light of her poor performance at the final examination, Thurman received a grade of "U" (unsatisfactory) for the Spring 1997 semester.

The plaintiff submitted the revised dissertation in October 1997. With the approach of the holiday season and undergraduate exams, Hoffman was unable to convene a meeting of Thurman's committee prior to the end of the semester. Thurman was given a grade of "S" (satisfactory) for the Fall 1997 semester.

The committee met in January 1998 to evaluate the revised dissertation. The committee members believed that the paper still contained numerous substantive problems; incredibly, they also noted that Thurman had ignored much of the specific feedback given to her at the oral defense in February 1997. The committee therefore unanimously voted to fail the revision and to assign a grade of "U" for the Spring 1998 semester.

According to the LSU Graduate School Handbook, a student who receives a second grade of "U" is subject to being dropped from the Graduate School. Because

Thurman had now received two "U's," she was notified at the conclusion of the Spring 1998 semester that she was being dropped as a student from the Graduate School.

The plaintiff appealed the "U" she received for the Spring 1998 semester to John Larkin, the Senior Associate Dean of the Graduate School. During the appeal process, Thurman complained (mistakenly) that her committee members might not understand her research, that her dissertation involved a specialized subject matter with which her committee members might not be familiar. Thurman also complained that her committee was never going to pass her dissertation, having twice rejected the paper already. In response, Larkin asked whether Thurman believed there were any faculty members at LSU other than her current committee members who might be able to fairly evaluate her dissertation. Thurman identified two other LSU professors: Abbas Tashakkori and Jim Wandersee.

In December 1998, Larkin granted the plaintiff's appeal and changed her grade for the Spring 1998 semester from a "U" to an "S." Larkin based his decision on Thurman's complaint that her committee might not have fully understood the allegedly specialized subject matter of her research. Larkin told Thurman that she would be allowed to informally submit her dissertation to Professors Tashakkori and Wandersee, who would critique her paper. Afterward, the plaintiff could revise the paper as she felt appropriate and formally resubmit it for grading in the Spring 1999 semester. In response to Thurman's complaint that her original graduate committee would never pass her dissertation, Larkin said he would form a new committee to whom the plaintiff could submit her paper.

Tashakkori and Wandersee reviewed the plaintiff's dissertation in early 1999. Like the plaintiff's original committee, both men felt the document contained numerous substantive flaws, many of which were fatal. They each wrote detailed memos to Larkin expressing their specific concerns in February 1999, and Larkin forwarded the memos to the plaintiff for her consideration in March.

On March 14, 1999, Thurman wrote Dean Larkin and proposed that she make certain of the revisions suggested by Tashakkori and Wandersee. She also requested that Larkin "make a decision as to whether the proposed revision of this document will be acceptable." As she candidly acknowledged in her deposition, Thurman was now changing her tactic; instead of having her dissertation approved by a graduate committee like other students who receive their Ph.D. from LSU, she was now proposing that Dean Larkin, a man with no training whatsoever in communication sciences and disorders, assign a grade to the document. Furthermore, she was proposing that Larkin *tell her in advance* whether "the proposed revision . . . will be acceptable." Larkin declined the invitation.

On April 13, 1999, Thurman wrote to Chancellor William Jenkins and again demanded that she be awarded her degree. LSU declined the proposal. LSU further notified Thurman that because she had now passed her seven-year deadline in the program without submitting an acceptable dissertation, she would receive yet another

grade of "U."[1] This "U," officially her second (after her "U" in the Spring 1998 semester was reversed on her appeal) would normally have resulted in her being dropped from the Graduate School. However, LSU informed Thurman that it would consider her April 13 letter to Jenkins as an appeal (even though she had not designated the letter as such), thus preserving for Thurman the ability to challenge the grade and remain in the Graduate School.

Thurman chose not to appeal and once again reiterated her demand that she be awarded her degree. LSU again rejected the demand and reminded Thurman that her seven years in the program had expired. LSU informed the plaintiff, however, that it would grant her an extension of time and allow her to remain in the doctoral program and pursue her degree, but that she would still be required to submit the dissertation for review to a committee.

The plaintiff rejected this final overture from LSU. She never did submit a revised copy of her dissertation during the Spring 1999 semester.

B. Procedural History

Norah Thurman filed this lawsuit against LSU in November 1999 in the Nineteenth Judicial District Court for the State of Louisiana. She claims that she was denied due process while a graduate student.

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[1] Doctoral students have seven years in which to complete their program; if they have not completed their degree requirements within seven years, the Graduate School has the discretionary power to extend the deadline.

In December 2001, LSU filed a motion for summary judgment as to all claims. After a hearing on January 28, 2002, the trial court denied the motion.

LSU subsequently filed an application for a supervisory writ of review with the Louisiana Court of Appeal for the First Circuit. On July 15, 2002, the First Circuit granted the writ, reversed the trial court, and entered judgment in LSU's favor dismissing all of the plaintiff's claims against LSU.

On August 14, 2002, Thurman filed an application for supervisory review with the Louisiana Supreme Court. That court unanimously denied the plaintiff's application on November 8, 2002.

Thurman filed a petition for a writ of certiorari with this Court on or about February 3, 2003.

ARGUMENT

A. The Independent Revision

Thurman defended her original dissertation in the Spring 1997 semester. When the committee conferred at the conclusion of the defense, they unanimously agreed that the dissertation did not deserve a passing grade. They noted numerous substantive problems with the written dissertation itself; furthermore, Thurman did not appear to have a clear and detailed understanding of her own research and was unable to satisfactorily explain or defend the literature, the methods, the statistics, or the results of her research. The committee was thus concerned that Thurman had relied too heavily on her major professor and had not demonstrated the ability to do independent

research and writing. However, even though the committee members unanimously agreed the dissertation did not deserve a passing grade, they gave her another chance to obtain her degree by allowing her the opportunity to revise the paper according to the feedback given to her at the oral defense, without any further input from Hoffman or the committee.

Thurman claims she was denied due process because she was required to revise her dissertation without further assistance from her major professor and committee. Her burden is to show that the committee's decision to require the independent revision was such a substantial departure from accepted academic norms that they could not have exercised professional judgment. *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 513, 88 L. Ed. 2d 523 (1985). However, the undisputed evidence compels precisely the opposite conclusion. The committee believed, based on the widespread problems with the dissertation itself and on Thurman's inability to satisfactorily explain or defend her own dissertation, that she had not demonstrated the ability to work independently. They responded by giving Thurman a final opportunity to demonstrate that ability and to obtain her degree, by performing the independent revision using only the feedback given to her at the oral defense. The plaintiff's committee members exercised their professional academic judgment to formulate a response specifically tailored to

address their specific concern. In doing so, they acted entirely in accordance with prevailing academic norms.[2]

Thurman also complains that the independent revision was contrary to the Graduate Bulletin, which states that "during the entire period of work toward the doctorate, a student's program is directed by a special advisory committee." However, the committee's concern was that Thurman had relied too heavily on her major professor and committee, that she had completely failed to demonstrate the ability to do independent research and writing. They responded by narrowly tailoring a specific response to address a perceived academic deficiency. Furthermore, Thurman conveniently neglects to quote another provision from the Graduate Bulletin: "Satisfaction of the minimum requirements of the Graduate School, as stipulated in this bulletin, in no way relieves a doctoral student of responsibility for satisfying any additional requirements deemed appropriate by the graduate faculty of the degree programs in which he or she is enrolled." In other words, the Bulletin specifically contemplates that more particularized requirements may be imposed on students to ensure they are deserving of the degree.

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[2] In depositions, John Larkin, Paul Hoffman, and Jim West were asked whether they personally knew of any other instance in which an advisory committee had required a student to independently revise his or her dissertation. All three men testified that they were not familiar with any similar situations. However, the issue is whether Thurman's committee exercised its professional judgment, not whether these faculty members had previously encountered a similar situation. As Larkin noted in his deposition: "That's not common as far as I know, *but it is certainly within the rights of the department to do that.*" (Emphasis added).

As noted in the Graduate Bulletin:

> [The doctoral degree] is conferred only for work of distinction in which the student displays decided powers of original scholarship and only in recognition of marked ability and achievement. . . . A [doctoral] student must prove ability to complete a significant program of original research by preparing a dissertation embodying creative scholarship. . . .

Thurman's advisory committee was concerned that she had not displayed "powers of original scholarship" or "marked ability and achievement," had not shown the ability to complete a program of "original research," and had not prepared a dissertation embodying "creative scholarship." They exercised their professional academic judgment to craft a response designed to ensure that the plaintiff could display the powers of original and creative scholarship necessary to obtain a Ph.D.

In her petition, Thurman characterizes the situation as if she had been left to grope her way through the revision without any guidance whatsoever. Her characterization is not only incorrect, it is inconsistent with her own deposition testimony. As she freely admitted in her deposition, her committee gave her significant amounts of feedback, both written and oral, to guide her during the re-write period. Thurman also testified that she received complete edited copies of the dissertation itself from Professors Norris and Oetting.

The committee's decision to require Thurman to do an independent revision was purely an exercise of their professional academic judgment that is incapable of being meaningfully reviewed in a court of law. A contrary ruling

would place a jury of lay persons in the position of dictating to LSU how it should respond to the perceived academic shortcomings of its graduate students.

B. False Allegations

Attempting to conjure an issue of fact where none exists, Thurman portrays the committee's decision in January 1998 to fail her revised dissertation as a sinister event. She says that "no one knows the date or location of this alleged meeting," she refers to the "alleged" vote to fail her revised dissertation, and she says that "there are no records or notes of this meeting." (Pet. at p.4.)

These allegations are false, and Thurman knows they are false. LSU produced the signed and dated examination card from this meeting almost three years ago, on April 5, 2000. The card was signed by all members of Thurman's committee, and each of them indicated in writing their vote to fail the dissertation. The card was also signed and approved by Dean Larkin on January 29, 1998, the day after the meeting. Thurman has acknowledged on several occasions during the course of this litigation that she received the examination card when it was produced by LSU, yet she continues to make these false allegations.

C. The Academic Integrity Non-Issue

When the plaintiff's committee failed her revised dissertation in the Spring 1998 semester, they noted that she appeared to have committed a breach of academic integrity by re-writing her methodology section to alter the manner in which she claimed to have conducted her research. Thurman now claims that LSU denied her due

process by failing to comply with the procedures defined in PS-69, a University policy statement regarding allegations of research misconduct. (Pet. at p.5.)

LSU's response is four-fold.

First, it is undisputed that LSU subsequently granted Thurman's appeal and changed her grade to "Satisfactory," notwithstanding the academic integrity issue; thus, LSU remedied the alleged harm. Second, Thurman's argument regarding PS-69 is wholly unsupported by the state court record and is nothing more than the argument of her attorney, as she did not bother to introduce PS-69 into evidence when she opposed LSU's motion for summary judgment, nor did she bother to introduce any testimonial evidence that would support her allegations regarding the contents of PS-69. Third, Thurman candidly admitted in her deposition that she herself was responsible for the committee's confusion regarding her methodology, that when she revised her dissertation she inadvertently omitted a key explanatory sentence from the methodology section. Fourth, the committee raised the academic integrity issue in a letter to Thurman dated January 28, 1998, yet Thurman did not file this lawsuit until November 15, 1999; accordingly, any legal claim arising from this specific factual allegation has long ago prescribed under Louisiana's one-year prescription period.

D. The Thirty-Day Non-Issue

Thurman alleges that LSU denied her due process when it failed to resolve her 1998 appeal within thirty days as required by PS-48, a University policy statement regarding student appeals. In support, she selectively lifts a quote from a letter from Dean Larkin in which he stated

he would be unable to respond within thirty days. Thurman conveniently fails to quote the rest of the letter, however, in which Larkin stated that he needed more time because Thurman herself had been so tardy in responding to Larkin's inquiries. Larkin also noted that the delay was attributable to Thurman's insistence that all communication between her and LSU first be routed through her attorney. The Louisiana Court of Appeal for the First Circuit expressly and correctly noted that any delays were to accommodate Thurman, not to hinder her. Furthermore, such an allegation is insufficient to amount to a denial of due process.

E. Thurman's Appeal Was Successful

As previously noted, the plaintiff's graduate advisory committee failed the revised dissertation and gave the plaintiff a grade of "U" for the Spring 1998 semester. Because this grade was the plaintiff's second "U," she would ordinarily have been dismissed from the University. However, Thurman appealed the grade to Dean Larkin in March 1998, and Larkin subsequently granted the appeal and changed the "U" to an "S."

Thurman's appeal was successful, the grade was changed, and she was allowed to remain in the Graduate School! Even if the plaintiff is correct (which she is not) that she had a right to consult with her major professor and committee while revising her dissertation, and even if she is correct (which she is not) that she should have been allowed a second oral defense, LSU remedied all of these alleged errors when it granted her appeal, changed the disputed grade, and allowed her to go forward with another committee and yet another revision of her paper.

F. The "Second Appeal"

Adhering to the principle that no good deed should go unpunished, Thurman seeks to make a legal issue of LSU's good faith offer to grant her a second appeal.

On April 13, 1999, Thurman's attorney wrote to Chancellor William Jenkins and demanded that Thurman be awarded her degree. LSU declined the proposal and notified Thurman that because she had now passed her seven-year deadline in the program without submitting an acceptable dissertation, she would receive yet another grade of "U." This "U," officially her second (after her "U" in the Spring 1998 semester was reversed on her appeal) would normally have resulted in her being dropped from the Graduate School. However, LSU offered to consider her April 13 letter to Jenkins as an appeal, even though she had not designated the letter as such. LSU made this offer to Thurman to preserve her ability to challenge the grade and remain in the Graduate School.

As she candidly acknowledged in her deposition, Thurman ignored LSU's offer of a second appeal:

> Q: But you chose not to go through with the appeal process?
>
> A: I don't think I did appeal. I know I didn't do an appeal.

Her attorney even wrote a letter on May 24, 1999, emphatically insisting that "this matter will not be 'returned to the academic arena.'" Yet now, desperately seeking to salvage her suit, Thurman makes the remarkable statement that "LSU failed to follow its established appeal procedures in connection with this appeal by Ms. Thurman." (Pet. at pp. 9-10.) In other words, LSU made a

good faith gesture to treat the April 13 letter as an appeal; it is undisputed that Thurman rejected LSU's offer, yet now she seeks to hold LSU accountable for not following its appeal procedures. This argument has no merit whatsoever.

G. Thurman Never Did Resubmit Her Dissertation

When Dean Larkin granted Thurman's appeal in December 1998, he did so specifically on the condition that she submit her dissertation in the Spring 1999 semester for grading by a new committee. Thurman never did submit her dissertation in the Spring 1999 semester. By failing to submit a new version of her dissertation for grading that spring, she failed to comply with the terms of her appeal and she allowed her seven years in the program to lapse without having submitted an acceptable dissertation.

H. Thurman Received Procedural Due Process And More

A student dismissed for academic reasons is not entitled to a hearing before the decision-maker; instead, it is only necessary that the student receive notice of the school's dissatisfaction with his or her academic performance and the threat of possible dismissal. *Board of Curators v. Horowitz*, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978).

Norah Thurman received far more than what *Horowitz* requires. LSU provided her with notice of its dissatisfaction with her academic performance on multiple occasions, including significant oral and written criticisms from her advisory committee at her final examination in

January 1997; written notification in May 1997 that she had received a grade of "U," and that a second "U" would result in her dismissal; written criticisms from her committee after she submitted her revised dissertation in the Spring 1998 semester; and written criticisms of her dissertation from Drs. Tashakkori and Wandersee.

Additionally, Thurman availed herself of LSU's student appeal procedure to challenge the grade of "U" that she received in the Spring 1998 semester. As a result of this appeal, she was granted a face-to-face hearing with John Larkin, the Interim Dean of the Graduate School, in December 1998. Thus, not only did LSU notify Thurman on numerous occasions of her poor academic performance and the threat of her possible dismissal, LSU went even further and granted the plaintiff an actual face-to-face meeting with the person who was to make the final decision on her appeal.

Finally, after Thurman's appeal was granted, LSU took the extraordinary step of allowing her to send her dissertation to two "outside" professors, Tashakkori and Wandersee, for additional feedback. Thurman had previously identified Tashakkori and Wandersee as LSU faculty members not on her committee who would understand the allegedly specialized subject matter of her dissertation and who were capable of reading and critiquing her dissertation and providing her with additional feedback.

Norah Thurman received far more procedural process than is required by the Constitution.

THERE ARE NO COMPELLING REASONS TO GRANT THE PETITION

Rule 10 of the Rules of the Supreme Court of the United States says that a petition for a writ of certiorari is only granted for compelling reasons, and that "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Certainly, there are no compelling reasons for granting Norah Thurman's petition. LSU gave Thurman numerous opportunities to obtain her degree. In February 1997, she submitted her original dissertation. (It was rejected.) In February 1998, she submitted her revised dissertation. (It was also rejected.) In December 1998, her appeal was granted, her grade was reversed, and she was given yet another opportunity to resubmit her dissertation in the Spring 1999 semester. (She failed to submit her dissertation during the Spring 1999 semester.) In May 1999, LSU offered to consider her demand letters as another appeal, which would have allowed her to remain in the program. (She rejected the offer.) In June 1999, LSU offered her an extension of time to remain in the program and work on her dissertation. (She rejected the offer.)

Norah Thurman simply complains that the lower courts made erroneous factual findings and misapplied this Court's decisions in *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 513, 88 L. Ed. 2d 523 (1985), and *Board of Curators v. Horowitz*, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978). There is no compelling reason to grant the petition.

CONCLUSION

Norah Thurman was extended numerous opportunities to obtain her degree and was treated at all times in a manner entirely consistent with the requirements of the Due Process Clause. Notwithstanding these numerous opportunities, she never submitted a dissertation deserving of a doctoral degree. To this day, Norah Thurman's dissertation has never been approved by a single faculty member at LSU, and she is the only person involved in this litigation who believes that she deserves a Ph.D. or that she was mistreated in her pursuit of the degree.

Respondent is entitled to judgment as a matter of law and respectfully requests that this Honorable Court deny the petition for writ of certiorari.

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